

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-034

**XXXXXXXXXXXXXX
XXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application and military records on November 18, 2009, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 29, 2010, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his military record by removing his promotion year [PY] 2010 failure of selection for promotion to lieutenant (LT) and by directing that the next selection board to consider his record be considered his first opportunity for promotion to the grade of LT.

APPLICANT'S ALLEGATIONS

The applicant alleged that his consideration for promotion to LT before the PY 2010 selection board was unjust because he did not have enough time in grade as a LTJG to be competitive for promotion to LT. The applicant was promoted to LTJG on July 1, 2008 and the PY 2010 LT selection board met on September 21, 2009. The applicant stated that "[w]hen selecting my date of rank, I was unaware that the date would position me to be up for the next LT board. [If I had known,] I would have selected a different date of rank."

BACKGROUND

In two earlier BCMR applications, the Board ordered the applicant's record corrected by reinstating him to active duty and by removing an OER and his failure of selection for promotion to LTJG. On May 11, 2007, the Board issued the following order in a technical amendment to Docket No. 2006-070:

Within a reasonable time, but not to exceed sixty days from the date of this decision, the Coast Guard shall offer the applicant the opportunity to be reinstated on active duty at a unit other than Coast Guard Sector Portland. Such reinstatement shall be at a time convenient to the applicant and Coast Guard, but must be completed within six months from the date of this decision. The applicant's record shall be further corrected to show that he was never discharged from active duty and that his commission was never revoked. He shall receive back pay and allowances, subject to appropriate off-sets.

If the applicant returns to active duty, he shall be given the opportunity to earn one full additional OER before his record is placed before a selection board for promotion to LTJG.

Once the applicant has earned one additional OER (*for a complete OER cycle*) after his reinstatement to active duty, his record shall be placed before the next LTJG selection board. If the applicant is selected for promotion to LTJG by that board, he shall receive the date of rank commensurate with that board or a date of rank no earlier than if selected by the 2006 selection board at his discretion. If the applicant is not selected for promotion by that board, he shall be considered to have twice failed of selection for promotion to LTJG.

The applicant was selected for promotion to LTJG by the selection board that convened on June 2, 2008. Pursuant to the Board's order in 2006-070, the applicant's LTJG date of rank could have been commensurate with that resulting from the 2008 selection or a date of rank no earlier than that he would have had if selected by the 2006 selection board, at his discretion. In an email from the applicant to Coast Guard personnel at Headquarters, the applicant stated that he elected July 1, 2008 as his LTJG date of rank and not an earlier date. He stated the following: "It is my understanding that if I choose to have my rank (LTJG) backdated, I would be up for LT promotion without any LTJG OERs. With no LTJG OERs, I would not be very competitive for that board. Not being very competitive for LT at this point has been a driving factor for me to choose the date of rank (LTJG) of July 1, 2008." On August 1, 2008, the applicant was appointed to the grade of LTJG with a July 1, 2008 date of rank.

VIEWS OF THE COAST GUARD

On April 15, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Service Command (PSC). In recommending denial of the applicant's request, PSC offered the following:

[T]he applicant was not selected for promotion by the PY10 LT selection board.

Although the applicant had the latest date of rank of those considered by the PY 10 LT selection board, he had three LTJG OERs prior to going before the board.

Of the 389 members reviewed by the PY 10 LT selection board, approximately 300 had three or fewer OERs.

The applicant's claim that he was "unaware" is based on a flawed assumption that [he] had the option to choose a later date of rank. The applicant's July 1, 2008 date of rank is the latest date of rank he could have chosen pursuant to BCMR No. 2006-070.

Due to the law . . . and policies . . . governing officer promotions, it is common for LTJGs to have only three LTJG OERs prior to being placed before a LT selection board. Therefore, the member's date of rank did not disadvantage him as compared to his peers.

Granting the applicant relief based on his date of rank would set a precedent that may require revision of 14 USC § 257 thereby delaying promotions to LT. Upsetting the long standing officer promotion cycle will have unintended workforce management impacts and is not in the best interests of the Coast Guard.

APPLICANT'S REPONSE TO THE VIEWS OF THE COAST GUARD

On April 21, 2010, the Board sent the applicant a copy of the Coast Guard's views and advised him that he could submit a response. The Board did not receive a reply from the applicant to the views of the Coast Guard.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant's contention that his PY 2010 failure of selection for promotion to LT was unjust because his July 1, 2008 LTJG date of rank resulted in his record being non-competitive for promotion is without merit. The applicant has not alleged, nor presented any evidence, that his record before the LT selection board was not a fair and accurate representation of his performance. Although he argued that he was not competitive because of his LTJG date of rank, he offered no evidence to support that allegation. In fact, the applicant had earned three LTJG OERs when his record was considered by the LT selection board. According to the Coast Guard, approximately 300 other LTJGs before that board had three or fewer OERs. This statistic strongly suggests that it was not the applicant's date of rank that caused his failure but rather his record of performance. According to Article 14.A.4.d. of the Personnel Manual, all commissioned service of a LTJG is considered significant when evaluated for promotion to LT. In this regard, the Board notes that the applicant's record contains a derogatory ensign OER in which the reporting officer rated him as unsatisfactory on the comparison scale in block 9 when

compared to all other ensigns that reporting officer has known throughout his career. Further, selection to LT is on a best qualified basis and the applicant was not among those the selection board members considered best qualified.

3. The applicant suggested that if he had known that a July 1, 2008 date of rank would have had his record placed before the next selection board he would have selected a different date of rank. The applicant misinterpreted the relief ordered by the Board in Docket No. 2006-070. The order in that case was not without limitation. In Docket No. 2006-070, the Board found that the applicant, an ensign at the time, had been wrongfully discharged from the Coast Guard and ordered his reinstatement to active duty and the placement of his record before the LTJG selection board only after being allowed the opportunity to earn at least one full OER prior to consideration by that board. The Board further ordered that if the applicant was selected by the LTJG selection board he would receive a date of rank “commensurate with that board or a date of rank no earlier than if selected by the 2006 LTJG selection board.” The LTJG selection board met on June 2, 2008, and the applicant in consultation with PSC personnel decided on July 1, 2008 as his LTJG date of rank. The applicant’s LTJG date of rank was in accordance with the Board’s order in Docket No. 2006-070 and the applicant has not proved otherwise. Moreover, by having a July 1, 2008 LTJG date of rank, the applicant was able to build a record as a LTJG by earning three LTJG OERs.

4. Further there was no legal error in placing the applicant’s record before the PY 2010 LT selection board. According to Article 5.A.4.a. of the Personnel Manual, a LTJG becomes eligible for promotion to the next higher grade *at the beginning of the promotion year* in which he or she completes 2 years of service computed from the date of rank in the grade in which serving. Pursuant to Article 5.A.1.d. the promotion year begins on July 1 of each year and ends on June 30 of the following year. The applicant’s LTJG date of rank is July 1, 2008, and he became eligible for consideration for promotion to LT on July 1, 2009. Therefore, the applicant was properly before the LT selection board, which met on September 21, 2009, because he was in his second year as a LTJG on July 1, 2009.

5. Since the applicant has not shown an error or injustice in his record, no basis exists on which to consider the removal of his failure of selection for promotion to LT. Accordingly, the applicant’s request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX USCG, for correction of his military record is denied.

Nancy L. Friedman

Robert S. Johnson, Jr.

Lynda K. Pilgrim